IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2565 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AZIZABANU A.SHAKUR PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2565 of 1993

MR JC SHETH for Petitioner No. 1

MR KL PANDYA ASST GOVERNMENT PLEADER for Respondent No. 1

MR SN SHELAT for Respondent No. 2-3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/10/2002

ORAL JUDGEMENT

#. This petition has been filed for a direction to the respondent for recruitment of the petitioner as her name was not placed in the waiting list as qualified person. The Municipal Corporation of Ahmedabad is

running primary schools in the City of Ahmedabad through - Nagar Prathmik Shikshan Samiti [for short "the Committee"] of Municipal Corporation and those schools are being run under the supervision and guidance of the concerned Officer of the Nagar Prathmik Shikshan Samiti of Municipal Corporation Ahmedabad as per the the Rules, Regulations and Guidelines issued by the Corporation and also of the State of Gujarat. The Municipal Corporation through the said Committee issued an advertisement on date 4-11-1992 in newspaper daily "Gujarat Samachar" and invited applications for the post of Teachers for the primary schools run by the Corporation through different medium for preparing waiting list for the post of teachers in such primary schools. They also published necessary requirements of qualification and mode of assigning marks for various qualifications.

#. It is also asserted that the petitioner is eligible for the post of primary school teacher as per the rules and regulations prescribed therefor by the Municipal Corporation as well as State Government. The Municipal Corporation required 120 primary teachers. As such, the advertisement was made for preparing the waiting list. Out of 120, 108 candidates were called for interview and appeared before Staff Section Committee and wailing list of 82 candidates was prepared and that list was prepared arbitrarily without taking into consideration the required merit and the qualification of the petitioner. But the petitioner's name does not find place in the waiting list though she is qualified and wrongly her name was excluded from the waiting list. Out of list of 82 candidates, the Committee has selected 7 disable persons which is more than actual percentage of reservation for the disabled and handicapped persons. As such, the list prepared is illegal and not in accordance with the norms prescribed therefor. The affidavit-in-reply has been filed in this case on behalf of the respondent Nos.2 & 3, wherein it is stated that in response to the advertisement dated 1st November, 1991 for the post of Urdu Primary Teachers, 118 applications were received and petitioner was one of the applicants. The Staff Selection Committee prepared a list of 82 candidates on 12th May, 1992. The candidate at Sr.No.82 had received 61.29 % marks on the basis of calculation as per the Government Resolution. On the aggregate the petitioner received 60.45 % marks, while the petitioner has worked out that she is entitled to 62.38 % marks which is erroneous and the petitioner is not entitled to 2 marks in respect of tailoring as claimed by her. More over, it is also stated that out of 82 candidates listed on the select list, only 60 candidates have been offered

appointment since there are no further vacancies. It is mentioned in the norms for selection that only the candidates those who have possessed qualification prior to the advertisement and have got the marksheet and those who can enclose the marksheet may apply, meaning thereby, the persons who possessed qualification prior to the advertisement and they were required to enclose marksheet so that they may be allotted suitable marks as per the given guidelines in the advertisement itself. It is admitted in Para-3 of the Rejoinder of the Affidavit that the petitioner is entitled to two marks in respect of passing tailoring examination before the marks were assigned to her inasmuch as the petitioner has informed the authorities concerned that at the time of application for the post in question, the petitioner has already appeared at the examination for tailoring and that before the Committee sent for consideration of total necessary marks to be assigned to the candidates, the petitioner had informed that she has already passed out the examination. As such, the claim of the petitioner for getting two more marks on the basis of passing the Tailoring Examination ought to have been taken into consideration. On the basis of the averments made Para-3 of the Reply Rejoinder Affidavit, she sought to have been appointed.

#. The controvery in the present petition is whether the petitioner is entitled for two marks of tailoring qualification. I have heared the Learned Counsel for the parties and perused the relevant papers on record with regard to controvery in hand.

#. It is also pointed out by learned counsel for the respondent from the Application Form submitted by the petitioner that she has not submitted any certificate regarding the Tailoring Examination which is said to have been passed by her. Secondly, it appears from the averments made in para-3 of the Rejoinder Affidavit that the petitioner at the relevant time when the advertisement was made, she had not accompanied the copy of the Tailoring Certificate. As such, the petitioner was not entitled for two additional marks if she had not submitted the tailoring certificate at the relevant time, she cannot be given benefit of two additional marks for tailoring certificate which has been admittedly submitted later on.

#. As such, I do not find any good reasons for interference and the petitioner is not entitled for selection for the appointment of Primary Teacher. In the facts and circumstances, I do not find any merit in the

petition. Accordingly, petition is dismissed. Rule discharged with no order as to costs.

Date : 18-10-2002 [Kundan Singh, J.]

#kailash#